

AMENDED IN ASSEMBLY JUNE 10, 2010

AMENDED IN SENATE MAY 28, 2010

AMENDED IN SENATE MAY 12, 2010

AMENDED IN SENATE APRIL 5, 2010

SENATE BILL

No. 1355

Introduced by Senator Wright

February 19, 2010

An act to add *and repeal* Section 4007.5~~to~~ of the Family Code, relating to child support.

LEGISLATIVE COUNSEL'S DIGEST

SB 1355, as amended, Wright. Child support: suspension of support order.

Existing law provides that if a court orders a person to make payments for child support until the occurrence of a specified event, the obligation of the person ordered to pay support terminates on the happening of the contingency.

This bill would, *until July 1, 2015*, provide that the obligation of a person to pay child support pursuant to an order that is being enforced by a local child support agency under Title IV-D of the Social Security Act is suspended for the period of time exceeding 90 days in which the obligor is incarcerated or involuntarily institutionalized, with specified exceptions. The bill would require that, upon the release of the obligor, the obligation to pay child support immediately resume in the amount otherwise specified in the child support order prior to the suspension of that obligation. The bill would require the court to provide notice to the parties of the support obligation suspension at the time the order is issued *or modified*. The bill would authorize an obligor, upon release

from incarceration or involuntary institutionalization, to petition the court for an adjustment of the arrears pursuant to the suspension of the support obligation. These provisions would apply to all child support orders *and modifications* issued ~~and all modifications of child support orders requested on or after January~~ July 1, 2011.

The bill would also require the Judicial Council to ~~proscribe~~ *develop* forms necessary for the implementation of the above-described provisions, including forms for a petition to adjust arrears.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4007.5 is added to the Family Code, to
2 read:
3 4007.5. (a) Every money judgment or order for support of a
4 child that is being enforced by a local child support agency under
5 Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.)
6 shall provide the following:
7 (1) The obligation of the person ordered to pay support shall be
8 suspended for any period exceeding 90 consecutive days in which
9 the person ordered to pay support is incarcerated or involuntarily
10 institutionalized, *unless the obligor has the means to pay support*
11 *while incarcerated or involuntarily institutionalized.*
12 (2) The suspension of the support obligation shall only apply
13 for the period of time during which the obligor is incarcerated or
14 involuntarily institutionalized, after which the obligation shall
15 immediately resume in the amount otherwise specified in the child
16 support order.
17 (b) The court shall provide notice to the parties of the support
18 obligation suspension provided in subdivision (a) at the time the
19 order is issued *or modified.*
20 (c) Upon release from incarceration or involuntary
21 institutionalization, an obligor may petition the court for an
22 adjustment of the arrears pursuant to the suspension of the support
23 obligation authorized in subdivision (b). The obligor must show
24 proof of the dates of incarceration or involuntary
25 institutionalization, as well as proof that during that time, the
26 obligor ~~was unable to earn any income~~ *did not have the means to*
27 *pay the support.* The obligor shall serve copies of the petition to

1 the support obligee and the local child support agency, who may
2 file an objection to the obligor's petition with the court. An
3 obligor's arrears shall not be adjusted until the court has approved
4 the petition.

5 (d) Notwithstanding subdivision (a), the court may deny the
6 ~~obligor's petition if it makes a finding of one of the following:~~

7 ~~(1) The obligor had the means to pay support while incarcerated~~
8 ~~or involuntarily institutionalized.~~

9 ~~(2) The obligor's petition if it finds that the obligor was~~
10 ~~incarcerated or involuntarily institutionalized for any offense~~
11 ~~constituting domestic violence, as defined in Section 6211, against~~
12 ~~the support obligee or supported child, or for any offense that could~~
13 ~~be enjoined by a protective order pursuant to Section 6320, or as~~
14 ~~a result of his or her failure to comply with a court order to pay~~
15 ~~child support.~~

16 (e) For purposes of this section, "incarcerated or involuntarily
17 institutionalized" includes, but is not limited to, involuntary
18 confinement to a state prison, county jail, juvenile facility operated
19 by the Division of Juvenile Facilities in the Department of
20 Corrections and Rehabilitation, or a mental health facility.

21 (f) For purposes of this section, "suspend" means that the child
22 support order is modified and set to zero dollars (\$0) for the period
23 in which the obligor is incarcerated or involuntarily
24 institutionalized.

25 (g) This section applies to all child support orders *and*
26 ~~modifications issued and all modifications of child support orders~~
27 ~~requested on or after January July 1, 2011.~~

28 (h) The Judicial Council shall ~~proscribe~~ *develop* forms necessary
29 for the implementation of this section, including forms for a
30 petition to adjust arrears.

31 *(i) This section shall remain in effect only until July 1, 2015,*
32 *and as of that date is repealed, unless a later enacted statute, that*
33 *is enacted before July 1, 2015, deletes or extends that date.*